

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AVALONBAY COMMUNITIES,  
INC.,

Plaintiff,

v.

CARSON MARKETPLACE, LLC,  
Defendant.

Case No. SACV 08-1105 AHS  
(ANx)

Assigned for all purposes to  
Hon. Alicemarie H. Stotler, Chief  
Judge

**CONSENT JUDGMENT AND  
PERMANENT INJUNCTION**

1           WHEREAS, Plaintiff AvalonBay Communities, Inc. (“Avalon”) and Carson  
2 Marketplace, LLC (“Carson Marketplace”) have agreed in a separate agreement to  
3 settlement of the matters in issue between them and to the entry of this Consent  
4 Judgment and Permanent Injunction, it is hereby ORDERED, ADJUDGED, AND  
5 DECREED THAT:

6           1.     This is an action for: (1) federal trademark infringement, federal false  
7 designation of origin, and federal trademark dilution under section 43(a) of the  
8 Lanham Act, as amended, 15 U.S.C. § 1051, *et seq.*; (2) trademark dilution under  
9 California Business and Professions Code § 14247; (3) statutory unfair competition  
10 under California Business and Professions Code § 17200, *et seq.*; (4) common law  
11 trademark infringement; (5) common law unfair competition; and (6) unjust  
12 enrichment.

13           2.     This Court has jurisdiction over all of the parties in this action and over  
14 the subject matter in issue based on 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367(a),  
15 as well as 15 U.S.C. §§ 1119 and 1121(a). This Court has continuing jurisdiction to  
16 enforce the terms and provisions of this Consent Judgment and Permanent  
17 Injunction. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b) and  
18 (c).

19           3.     Plaintiff Avalon is a Maryland corporation, having its principal place of  
20 business at 2900 Eisenhower Avenue, Suite 300 Alexandria, Virginia 22314.

21           4.     Defendant Carson Marketplace is a Delaware limited liability  
22 corporation having its principal place of business at 4350 Von Karman Avenue, Suite  
23 200, Newport Beach, California 92660.

24           5.     For many years, and prior to the acts of Carson Marketplace discussed  
25 herein, Avalon has been using a distinctive family of trademarks that incorporate the  
26 word “Avalon” for the business of acquiring, developing, redeveloping, managing,  
27 and/or owning real estate properties.  
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1           6.     Avalon is the owner of and has the right to enforce United States  
2 Trademark Registration No. 1,871,559 for AVALON PROPERTIES & Design®;  
3 United States Trademark Registration No. 2,618,414 for AVALONBAY®; United  
4 States Trademark Registration No. 2,799,153 for AVALON & Design®; United  
5 States Trademark Registration No. 2,887,466 for AVALON & Design®; United  
6 States Trademark Registration No. 2,931,998 for AVALON COMMUNITIES®;  
7 United States Trademark Registration No. 2,950,374 for AVALONBAY®; United  
8 States Trademark Registration No. 2,950,378 for AVALON COMMUNITIES &  
9 Design®; United States Trademark Registration No. 2,950,379 for AVALON  
10 COMMUNITIES & Design®; United States Trademark Registration No. 2,950,380  
11 for AVALON ON THE®; United States Trademark Registration No. 2,980,030 for  
12 AVALON AT®; United States Trademark Registration No. 3,101,896 for  
13 AVALON®; United States Trademark Registration No. 3,154,668 for  
14 AVALONBAY®; United States Trademark Registration No. 3,174,679 for  
15 AVALON ON®; United States Trademark Registration No. 3,174,680 for AVALON  
16 ON THE®; United States Trademark Registration No. 3,174,681 for AVALON  
17 COMMUNITIES & Design®; United States Trademark Registration No. 3,419,667  
18 for AVALON COMMUNITIES & Design®; and United States Trademark  
19 Registration No. 3,423,982 for AVALON COMMUNITIES & Design® (hereinafter  
20 collectively referred to as the “Avalon Marks”). Copies of the federal registrations  
21 for the Avalon Marks, which are valid and enforceable throughout the United States,  
22 are attached hereto as Exhibits 1-17. These registrations remain in full force and  
23 effect.

24           7.     Carson Marketplace has used the mark “AVALON AT SOUTH BAY”  
25 in its business to market, advertise, promote, offer for sale, and/or sell or lease all or  
26 portions of the proposed residential, commercial, and mixed-use development  
27 located in Carson, California and bounded by the 405 Freeway, Avalon Boulevard  
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1 and Del Amo Boulevard, as well as in its business of leasing and management of  
2 shopping mall space and shopping center services (collectively hereinafter the  
3 “Project”). In addition, Carson Marketplace obtained and used the internet domain  
4 address of “avalonsouthbay.com.”

5 8. Carson Marketplace’s use of “AVALON AT SOUTH BAY” and  
6 “avalonsouthbay.com” after the date hereof would constitute trademark infringement  
7 of the Avalon Marks in violation of the Lanham Act, 15 U.S.C. §1051, *et seq.*, to the  
8 substantial and irreparable injury of the public and of Avalon’s business reputation  
9 and goodwill.

10 9. By marketing, advertising, promoting, offering for sale, and/or selling or  
11 leasing the Project using the “AVALON AT SOUTH BAY” name after the date  
12 hereof, Carson Marketplace would infringe Avalon’s federal and common law  
13 trademark rights in the Avalon Marks in violation of Section 43(a) of the Lanham  
14 Act, 15 U.S.C. §§ 1114 and 1125(a). Carson Marketplace’s above-recited acts if  
15 taken after the date hereof would further constitute false designation of origin, false  
16 deception, false representation, and/or unfair competition in violation of 15 U.S.C. §  
17 1125(a), as such acts are likely to confuse and deceive customers and prospective  
18 customers into believing that the Project is from or sponsored by Avalon.

19 10. The Avalon Marks are distinctive and famous, and Carson  
20 Marketplace’s use of the marks “AVALON AT SOUTH BAY” and  
21 “avalonsouthbay.com” was subsequent to the Avalon Marks becoming famous. By  
22 reason of Carson Marketplace’s acts complained of herein, taken after the date  
23 hereof, Carson Marketplace would cause the dilution of the distinctive quality of the  
24 Avalon Marks in violation of 15 U.S.C. § 1125(c) and California Business and  
25 Professions Code § 14330.

26 11. Carson Marketplace’s marketing, advertising, promotion, offering for  
27 sale or lease, and/or sale or lease of the Project using the “AVALON AT SOUTH  
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1 BAY” name after the date hereof would also constitute unfair competition in  
2 violation of California Business and Professions Code § 17200 *et seq.*, common law  
3 trademark infringement, and common law unfair competition.

4 12. Carson Marketplace and its members, managers, owners, officers,  
5 employees, attorneys, agents, servants and all persons and/or entities acting for, with,  
6 by or through it, and/or in active concert or participation with them are hereby  
7 permanently enjoined from engaging in any of the following activities:

8 (a) using the Avalon Marks, “AVALON AT SOUTH BAY,”  
9 “avalonsouthbay.com,” or any other mark, design, reproduction, copy, or symbol  
10 that is confusingly similar thereto, in connection with the marketing, advertisement,  
11 promotion, offering for sale or lease, and/or sale or lease of real estate related goods  
12 and services not authorized by plaintiff Avalon;

13 (b) using the Avalon Marks, “AVALON AT SOUTH BAY,”  
14 “avalonsouthbay.com,” or any other mark, design, reproduction, copy, or symbol  
15 that is a colorable imitation thereof, in any manner likely to cause confusion, to  
16 cause mistake, or to deceive the consuming public;

17 (c) representing in any manner that the Project originates from, is  
18 affiliated with, or is sponsored, approved, or authorized by Avalon or otherwise  
19 taking any action likely to cause confusion, mistake, or deception as to the origin,  
20 approval, sponsorship, or certification of goods, services or other products provided  
21 by Carson Marketplace; and

22 (d) infringing or diluting the distinctive quality of the Avalon Marks.

23 13. The parties shall bear their own attorneys’ fees, except as otherwise  
24 agreed to between the parties.

25 14. Service by mail upon Carson Marketplace, addressed to Gordon K. Eng,  
26 Brown Winfield Canzoneri Abram Inc., 300 S. Grand Avenue, 15th Floor, Los  
27 Angeles, CA 90071-3125, of a copy of this Consent Judgment and Permanent  
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1 Injunction entered by the Court is deemed sufficient notice under Federal Rule of  
2 Civil Procedure 65. It shall not be necessary for Carson Marketplace to sign any  
3 acknowledgement of service.  
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7 **IT IS SO ORDERED:**  
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9 Dated: October 23, 2008  
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**ALICEMARIE H. STOTLER**

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Hon. Alicemarie H. Stotler  
12 Chief U.S. District Court Judge  
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1 Approved as to form and content:

2 Dated: October \_\_, 2008

JONES DAY

3  
4 By: \_\_\_\_\_  
5 Brent D. Sokol

6 Attorneys for Plaintiff  
7 AVALONBAY COMMUNITIES,  
8 INC.

9 Dated: October \_\_, 2008

BROWN WINFIELD CANZONERI  
ABRAM INC.

10  
11 By: \_\_\_\_\_  
12 Gordon K. Eng

13 Attorneys for Defendant  
14 CARSON MARKETPLACE, LLC  
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